



POLICIES AND PROCEDURES NEW JERSEY EARLY INTERVENTION SYSTEM

Date: October 2008

No.: NJEIS-01	Subject: Sharing Information Relative to Child Abuse Investigations
Effective Date: Immediately	Category: Confidentiality
Review Date: October 2010	Responsible Party: Procedural Safeguards Coordinator

I. Purpose

To aid the Division of Youth and Family Services (DYFS) in the investigation of suspected child abuse cases while complying with the privacy rights that education records are afforded by the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g.

II. Policy

- The New Jersey Early Intervention System (NJEIS) receives federal funds from the U.S. Department of Education. As such, any education records – that is, records, files, documents and other materials containing information directly related to the child – maintained by the NJEIS are protected by FERPA.
- Under FERPA, the NJEIS must obtain written informed consent from a parent – that is, a biological parent, a foster parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian – of a child under eighteen years old before disclosing education records to a third party. However, there are exceptions to the parental consent requirement.
- FERPA makes an exception to the parental consent requirement in an emergency where the information is necessary to protect the health and safety of a child.
- A suspected case of child abuse may qualify as an emergency under which the NJEIS may disclose education records to DYFS – a third party – without parental consent.

III. Procedures

- a. A request for emergency disclosure based on a suspicion of child abuse must be initiated by DYFS by contacting the NJEIS and notifying the NJEIS Part C Coordinator that a formal request for emergency disclosure is forthcoming.
- b. Upon notice of a forthcoming request for emergency disclosure, the Procedural Safeguards Coordinator or her/his designee will supply DYFS with a written statement sufficient to put DYFS on notice of the FERPA disclosure rules.
- c. DYFS must sign and return a statement to the NJEIS acknowledging that DYFS is on notice of the FERPA disclosure rules. The NJEIS shall not accept a formal request for emergency disclosure prior to receiving such an acknowledgment from DYFS, nor shall the NJEIS accept a concurrent acknowledgment of notice when making a formal request.
 - i. The timing of the acknowledgment and the formal request must indicate to a reasonable person that DYFS acknowledged and understood the FERPA disclosure rules before it drafted its formal request for emergency disclosure.
 - ii. If there is any doubt as to the timing of the acknowledgment and the request, the NJEIS may return the request to DYFS without review.
- d. A request for emergency disclosure of education records maintained by the NJEIS to DYFS, based on suspected child abuse, must meet the following requirements:
 - i. DYFS must demonstrate – to the satisfaction of the NJEIS – that there is a serious threat to the health or safety of the child in question. Thus, DYFS must present the NJEIS with a signed, written request for information containing all of the following elements:
 1. A summary of the discrete facts that caused DYFS to reasonably believe that the child in question is indeed *presently* a victim of child abuse.
 - b. If the summary is developed based upon observations made by a DYFS employee, the stated facts within the summary must be reliable in that:
 - i. They must have been personally observed by the actual employee drafting the request.
 - ii. The DYFS employee must have a track record of reliability and credibility.
 - c. If the summary is developed based upon observations made directly by an individual other than a DYFS employee, the stated facts within the summary must be reliable in that:
 - i. They must have been personally observed or noted by the individual(s) reporting them to the DYFS employee drafting the request.
 - ii. The individual(s) reporting the facts to the DYFS employee drafting the request must have a track record of reliability and credibility.
 - iii. A direct supervisor must attest to the reliability of the facts. The signature of a supervisor is mandatory; the NJEIS will not consider a request that lacks the signature of a supervisor attesting to

the reliability of the facts DYFS is presenting to the NJEIS.

- d. The employee drafting the request must also attest that, to the best of her/his knowledge, the facts in the request are reliable. The employee's signature is required; the NJEIS will not consider a request that lacks the signature of the drafter attesting to the reliability of the facts DYFS is presenting to the NJEIS.
2. If any of the facts DYFS presents to the NJEIS in its fact summary are contained and confirmed in written documents in the possession of DYFS, DYFS must attach copies of such documents to its request for disclosure. Failure to do so will result in the rejection of the request.
3. If any of the facts DYFS presents to the NJEIS in its fact summary have merely been communicated by oral statement, the individual(s) making the statement(s) must reduce the oral statement to a signed writing, which is to be attached to DYFS's request for disclosure. Failure to do so will result in the rejection of the request.
4. DYFS must provide a written statement that clearly and unambiguously explains why the facts DYFS has provided the NJEIS form the basis of a reasonable belief that the child in question is being abused or neglected. Any clinical terminology used by DYFS in its explanation must be presented in a manner such that an ordinary layperson would comprehend the concepts DYFS has set forth as the basis for its belief that the child in question is being abused or neglected.
 - b. The NJEIS will determine whether the explanation provided by DYFS is presented with sufficient clarity. If the NJEIS determines that the explanation is unclear, the NJEIS has discretion to reject the request.
 - c. The NJEIS will determine if the explanation DYFS provides is sufficiently persuasive. If the NJEIS determines that the explanation is unpersuasive, the NJEIS has discretion to reject the request.
- ii. DYFS is not entitled to a blanket disclosure of information – educational records – by the NJEIS. In the case of an emergency disclosure, the NJEIS may only disclose information relevant to the particular and present case of suspected child abuse or neglect DYFS has alleged in its facts and explanation. DYFS must therefore provide the NJEIS with a written, signed statement containing all of the following elements:
 1. A list of the specific documents maintained by the NJEIS – and protected by FERPA – which DYFS believes are necessary to fully investigate and resolve the particular and present case of suspected child abuse or neglect.
 2. DYFS must clearly explain the relevance of each requested document to the investigation and resolution of the present suspected case of child abuse or neglect.

- a. DYFS must explain, with particularity, how each requested document is material to investigating and resolving the suspected case of child abuse or neglect.
 - b. DYFS must explain, with particularity, how the content of each document, if disclosed:
 - i. Would help to confirm or rebut the suspicion that the child is being abused or neglected.
 - ii. Would help DYFS in its resolution of the case.
- 3. This statement must be signed by the DYFS employee drafting it and that employee's direct supervisor.
- e. After reviewing a request for emergency disclosure, the NJEIS has full discretion to grant such a request if it satisfies the federal emergency disclosure exception for educational records protected under FERPA. *See* 20 U.S.C. § 1232g(b)(1); 34 C.F.R. §§ 99.31 (a)(10), 99.36(a-c).
 - i. The NJEIS has discretion to grant or reject the list of requested documents provided by DYFS in whole or in part if the NJEIS reasonably believes that granting the request for disclosure, in whole or in part, would not satisfy the federal emergency disclosure exception for educational records protected by FERPA. *See* 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10), 99.36(a-c). The NJEIS is not obligated to provide DYFS a reason for rejecting a request for a specific document.
 - ii. If, after review, a request for emergency disclosure is denied by the NJEIS, the NJEIS may provide DYFS with a brief written statement explaining the defects in the request, if any, and how they may be cured. An explanation need only be provided if the NJEIS deems such an explanation appropriate, given the circumstances of the request.
- f. If the NJEIS denies a request for disclosure, DYFS has recourse in the form of judicial bypass. That is, DYFS may request a court order or subpoena mandating production of the desired documents. FERPA makes an exception for judicial orders and subpoenas.

IV Related Policies and Procedures

NJEIS-11 (CAPTA Referrals)